

TRANSMITTAL SLIP		DATE
TO:		
ROOM NO.	BUILDING	
REMARKS:		
EXA <u> </u> 10 AUG 1987		
ADDA <u> </u> 10 AUG 1987		
DDA <u> </u> 11 AUG 1987.		
DOA Reg- Subj file (an impassioned argument to retain diplomatic immunity.)		
FROM:		
ROOM NO.	BUILDING	EXTENSION

87-1651X
United States Department of State
The Chief of Protocol
Washington, D.C. 20520

August 7, 1987

Dear Mr. Donnelly:

I thought you should see this as it could have such wide reaching effects, which I hardly need to enumerate. We hope to have your support and welcome your thoughts.

Sincerely,

A handwritten signature in cursive script that reads "Selwa Roosevelt".

Selwa Roosevelt

Enclosure:
As stated.

100TH CONGRESS
1ST SESSION

S. 1437

To make certain members of foreign diplomatic missions and consular posts in the United States subject to the criminal jurisdiction of the United States with respect to crimes of violence.

IN THE SENATE OF THE UNITED STATES

JUNE 26 (legislative day, JUNE 23), 1987

Mr. HELMS introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To make certain members of foreign diplomatic missions and consular posts in the United States subject to the criminal jurisdiction of the United States with respect to crimes of violence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) notwithstanding any other provision of law and, par-
4 ticularly, the Vienna Convention on Diplomatic Relations,
5 done on April 18, 1961, and the Vienna Convention on Con-
6 sular Relations, done on April 24, 1963, members of a for-
7 eign diplomatic mission (other than diplomatic agents) and
8 members of a foreign consular post (other than consular offi-

★(Star Print)

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1 cers) shall not be entitled to immunity from the criminal juris-
2 diction of the United States (or of any State) for any crime of
3 violence, as defined in section 16 of title 18, United States
4 Code, for drug trafficking, or for reckless driving or driving
5 while intoxicated or under the influence of alcohol or drugs.

6 (b) For purposes of this Act—

7 (1) the term “consular officer” has the same
8 meaning as is given to such term in Article 1(1)(d) of
9 the Vienna Convention on Consular Relations;

10 (2) the term “diplomatic agent” has the same
11 meaning as is given to such term in Article 1(e) of the
12 Vienna Convention on Diplomatic Relations;

13 (3) the term “members of a foreign consular post”
14 is used within the meaning of Article 1(1)(g) of the
15 Vienna Convention on Consular Relations; and

16 (4) the term “members of a foreign diplomatic
17 mission” is used within the meaning of Article 1(b) of
18 the Vienna Convention on Diplomatic Relations.

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STATEMENT OF SELWA ROOSEVELT

CHIEF OF PROTOCOL OF THE UNITED STATES

BEFORE THE COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

AUGUST 5, 1987

STATEMENT OF SELWA ROOSEVELT
CHIEF OF PROTOCOL OF THE UNITED STATES
BEFORE THE COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

AUGUST 5, 1987

I AM SELWA ROOSEVELT, CHIEF OF PROTOCOL. I APPEAR HERE TODAY PURSUANT TO CHAIRMAN PELL'S INVITATION TO THE DEPARTMENT OF STATE TO SUBMIT ITS VIEWS ON S. 1437, INTRODUCED BY SENATOR HELMS. WITH ME IS MR. MICHAEL G. KOZAK, PRINCIPAL DEPUTY LEGAL ADVISER OF THE DEPARTMENT OF STATE.

I AM RESPONSIBLE FOR THE ACCREDITATION OF FOREIGN GOVERNMENT PERSONNEL IN THE UNITED STATES. BY VIRTUE OF THEIR STATUS AS MEMBERS OF DIPLOMATIC MISSIONS, CONSULAR POSTS AND INTERNATIONAL ORGANIZATIONS, THEY ARE ENTITLED TO CERTAIN PRIVILEGES AND IMMUNITIES.

MR. CHAIRMAN, I HAVE AN ABBREVIATED WRITTEN STATEMENT FOR THE COMMITTEE. WITH YOUR PERMISSION, I WOULD LIKE TO READ IT.

I WILL BEGIN BY DISCUSSING IMMUNITY AND BRIEFLY EXPLAINING ITS PURPOSE.

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DIPLOMATIC IMMUNITY IS A FUNDAMENTAL PRINCIPLE OF INTERNATIONAL LAW UNDER WHICH CERTAIN FOREIGN OFFICIALS ARE NOT SUBJECT TO THE JURISDICTION OF LOCAL COURTS OR OTHER AUTHORITIES FOR OFFICIAL OR PERSONAL ACTIVITIES. THE REASON FOR IMMUNITY IS SIMPLE AND BASIC: IT IS TO ASSURE THAT DIPLOMATIC REPRESENTATIVES ARE ABLE TO CARRY OUT THE OFFICIAL BUSINESS OF THEIR GOVERNMENTS WITHOUT UNDUE INFLUENCE OR INTERFERENCE FROM THE HOST COUNTRY. IT ENABLES THEM TO WORK IN AN ENVIRONMENT OF FREEDOM, INDEPENDENCE AND SECURITY. IT WAS NOT DESIGNED TO BENEFIT INDIVIDUALS BUT RATHER TO ENSURE THE EFFICIENT PERFORMANCE OF THE FUNCTIONS OF THE MISSION.

DIPLOMATIC IMMUNITY HAS ITS ROOTS IN ANTIQUITY. IN OUR COUNTRY, STATUTES EXTENDING IMMUNITY TO DIPLOMATS WERE FIRST ENACTED BY THE CONGRESS IN 1790. THE CUSTOMARY INTERNATIONAL LAW OF DIPLOMATIC IMMUNITY WAS LATER CODIFIED IN 1961 WHEN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS WAS DRAFTED. THIS TREATY ENTERED INTO FORCE FOR THE UNITED STATES IN 1972. IN 1978 THE DIPLOMATIC RELATIONS ACT REPEALED THE 1790 STATUTES AND ESTABLISHED THE VIENNA CONVENTION AS THE DEFINITIVE UNITED STATES LAW ON THE SUBJECT. THE CORRESPONDING LAW GOVERNING CONSULAR IMMUNITY IS THE VIENNA CONVENTION ON CONSULAR RELATIONS OF 1963. I HAVE ATTACHED TO MY STATEMENT A CHART WHICH SHOWS THE DEGREE OF IMMUNITY ACCORDED TO PERSONNEL OF DIPLOMATIC MISSIONS AND CONSULAR POSTS.

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HAVING GIVEN THIS BACKGROUND, I WANT TO MAKE VERY CLEAR THAT THE DEPARTMENT OF STATE ABHORS ANY WRONG-DOING ON THE PART OF PERSONS ENTITLED TO IMMUNITY. I AM NOT HERE TO DEFEND THE INDEFENSIBLE, THAT IS, THE UNLAWFUL ACTS OF PERSONS HAVING IMMUNITY. THE SERIOUS ABUSES OF THOSE IMMUNITIES - ALTHOUGH RARE - WHICH HAVE BROUGHT THIS MATTER TO YOUR ATTENTION CONCERN ME DEEPLY AND I HAVE WORKED HARD DURING MY FIVE YEARS AS CHIEF OF PROTOCOL TO INSTITUTE A MORE EFFECTIVE RESPONSE TO INSTANCES OF DIPLOMATIC CRIME. I HAVE ESTABLISHED A REPUTATION IN THE DIPLOMATIC COMMUNITY FOR TOUGHNESS. I CANNOT OVEREMPHASIZE HOW STRONGLY I FEEL AND HAVE ALWAYS FELT ABOUT THIS ISSUE. AT THE SAME TIME, WE HAVE TO BRING RATIONAL THINKING TO THIS SUBJECT. WE MUST WEIGH EXTREME REMEDIAL MEASURES AGAINST THE GRAVE INJURY THAT THOSE MEASURES COULD CAUSE TO U.S. INTERESTS.

MR. CHAIRMAN, WITH ALL DUE RESPECT, WE CANNOT SUPPORT THIS PROPOSAL FOR A MOST ELEMENTAL REASON: IT WOULD BE DETRIMENTAL TO UNITED STATES INTERESTS ABROAD. REGARDLESS HOW GRIEVOUS THESE MATTERS MAY BE, OUR OWN NATIONAL INTEREST MUST TAKE PRECEDENCE OVER ANY OTHER CONSIDERATION.

IN A WORLD WHERE DISCORD AND DISAGREEMENT ARE PREVALENT IN RELATIONS AMONG STATES, THE PRINCIPLE OF IMMUNITY IS SOMETHING THE COMMUNITY OF NATIONS HAS AGREED UPON.

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BUT THERE IS A SECOND REASON. WE ARE AN HONORABLE NATION - WE ARE NOT AN IRAN. WE HAVE SET OUR SIGNATURE ON A TREATY. ENACTMENT OF THIS BILL WOULD PLACE THE UNITED STATES IN VIOLATION OF ITS INTERNATIONAL OBLIGATIONS. WE DO NOT BELIEVE THAT OUR GOVERNMENT, TO WHICH SO MANY OTHERS LOOK FOR GUIDANCE, SHOULD ABROGATE ITS RESPONSIBILITY UNDER INTERNATIONAL LAW.

IF THE UNITED STATES GOVERNMENT UNILATERALLY ALTERS ITS TREATY OBLIGATION, WE SURELY WILL INVITE MORE HARMFUL RECIPROCAL ACTION.

LET'S CONSIDER WHAT MIGHT HAPPEN IF SIMILAR LEGISLATION WERE PASSED IN OTHER COUNTRIES. THE BILL WOULD ELIMINATE IMMUNITY FOR CRIMES OF VIOLENCE, DEFINED AS: "THE USE, ATTEMPTED USE OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OR PROPERTY OF ANOTHER." THIS IS A LARGE CATEGORY OF CRIMES. OTHER COUNTRIES MIGHT RESPOND BY ELIMINATING IMMUNITY EVEN MORE BROADLY.

SIMILARLY, THE TERMS "RECKLESS DRIVING," "DRUG TRAFFICKING" AND "DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS" MIGHT BE INTERPRETED BROADLY BY OTHER COUNTRIES. IN ADDITION, EVEN IF ANOTHER COUNTRY ELIMINATED IMMUNITY FOR PRECISELY THE SAME CRIMES THAT THE BILL WOULD COVER, AMERICANS STILL WOULD FACE

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UNEQUAL TREATMENT. THOSE SERVING IN COUNTRIES WITH SIMILAR LEGISLATION COULD BE ARRESTED, DETAINED AND QUESTIONED UNTIL THE MATTER WAS FULLY ADJUDICATED. IN THE UNITED STATES, PERSONS MIGHT BE FREE ON BAIL PENDING TRIAL, BUT IN ANOTHER COUNTRY, THEY MIGHT BE HELD FOR MONTHS.

ONCE THE FLOODGATES ARE OPEN, OTHER GOVERNMENTS MAY NOT MIRROR THIS BILL IN THE RESPONSE THEY MAKE. THEY COULD GO BEYOND THE MEASURES PROPOSED BY THE BILL, FOR EXAMPLE, BY LIMITING THE IMMUNITIES OF DIPLOMATIC AGENTS. OR, THEY MIGHT CHOOSE TO KEEP INTACT THE IMMUNITY OF ADMINISTRATIVE AND TECHNICAL STAFF FOR VIOLENT CRIMES, BUT ELIMINATE THEIR IMMUNITY FOR OTHER CRIMES, SUCH AS ESPIONAGE.

THE LANGUAGE OF THE PROPOSED LEGISLATION COVERS ONLY MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF AND THE SERVICE STAFF OF DIPLOMATIC MISSIONS, AND CONSULAR EMPLOYEES. PERSONS NOT AFFECTED WOULD BE DIPLOMATIC AGENTS, MEMBERS OF THEIR FAMILIES, AND FAMILY MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFFS OF EMBASSIES.

BASED ON A REVIEW OF OUR FILES FOR A RECENT TWELVE-MONTH PERIOD AND A REVIEW OF THE ASHMAN-TRESCOTT BOOK, WE FIND THAT ONLY TWO INCIDENTS WOULD HAVE BEEN ADDRESSED BY THIS LEGISLATION. IN LIGHT OF THE FACT THAT ONLY TWO PEOPLE WOULD

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HAVE BEEN "BROUGHT TO JUSTICE" HAD THIS LEGISLATION BEEN IN FORCE PREVIOUSLY, WE ASK WHETHER ITS PASSAGE, UNDERMINING LONG-STANDING INTERNATIONAL CONVENTION, WOULD REALLY SERVE OUR BEST INTEREST, ESPECIALLY WHEN YOU CONSIDER THAT SO MANY AMERICANS AND THEIR DEPENDENTS ARE SERVING OVERSEAS?

THE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF AN EMBASSY MUST HAVE FULL CRIMINAL IMMUNITY IN ORDER TO PERFORM THEIR JOBS EFFECTIVELY. THESE PERSONNEL PERFORM TASKS FUNDAMENTAL TO THE OPERATION OF THE EMBASSY. MANY OF THEM, INCLUDING COMMUNICATORS WHO TRANSMIT ENCODED MESSAGES AND SECRETARIES WHO TYPE THE MISSION'S CLASSIFIED DOCUMENTS, ENGAGE IN VERY SENSITIVE WORK. THEY AND THEIR FAMILIES COULD BE SUBJECTED TO THE SAME PRESSURES THAT DIPLOMATS FACE. WE CANNOT TAKE GREAT COMFORT IN THE FULL IMMUNITY OF THE AMBASSADOR, OF THE FBI LEGAL ATTACHE, OF A MILITARY ATTACHE, OR OF THE PERSONNEL OF OTHER AGENCIES ENGAGED THROUGHOUT THE WORLD IN SUCH SENSITIVE WORK AS FIGHTING TERRORISM AND DRUGS, IF WE KNOW THAT THOSE WHO DO THEIR CLERICAL WORK AND TRANSMIT THEIR CLASSIFIED MATERIAL BACK TO WASHINGTON COULD BE INTERROGATED AND JAILED BY HOSTILE RECEIVING STATE AUTHORITIES.

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IF THE INTENT OF THE BILL IS ALSO TO REDUCE THE IMMUNITY OF FAMILY MEMBERS OF DIPLOMATS AND FAMILY MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF - AS WE HAVE BEEN LED TO BELIEVE INFORMALLY - WE CANNOT SUPPORT THE PROPOSAL.

UNDER THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS, MEMBERS OF THE FAMILY OF A DIPLOMATIC AGENT HAVE FULL CRIMINAL IMMUNITY, AS DO MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF A MISSION AND THEIR FAMILIES. LOWER LEVEL MEMBERS OF EMBASSY STAFFS HAVE CRIMINAL IMMUNITY FOR THEIR OFFICIAL ACTS. IN ADDITION, UNDER THE VIENNA CONVENTION ON CONSULAR RELATIONS, CONSULAR EMPLOYEES HAVE CRIMINAL IMMUNITY FOR ACTS PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS. THESE IMMUNITIES, WHICH SERVE IMPORTANT OBJECTIVES, ALL WOULD BE CURTAILED IF THE BILL WERE ENACTED.

WE BELIEVE COMPLETE IMMUNITY FROM CRIMINAL JURISDICTION ASSURED TO DIPLOMATS IS FUNDAMENTAL TO DIPLOMATIC RELATIONS. DIPLOMATS COULD NOT PERFORM THEIR DUTIES IF THEY FACED CRIMINAL LIABILITY UNDER LOCAL LAW FOR NORMAL PERFORMANCE OF THEIR JOBS, OR IF THEY COULD BE HARASSED BY THE RECEIVING STATE BRINGING FALSE CHARGES. MOREOVER, THE DIPLOMAT'S OWN IMMUNITY WOULD BE MEANINGLESS IF HIS FAMILY RESIDING WITH HIM DID NOT HAVE THE SAME IMMUNITIES. THE THREAT OF ACTIONS AGAINST FAMILY MEMBERS COULD BE USED TO INTIMIDATE THE DIPLOMAT.

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CAN YOU IMAGINE THE SPECTER OF THE AMERICAN AMBASSADOR'S SPOUSE INVOLVED IN AN AUTOMOBILE ACCIDENT BEING TAKEN AWAY BY THE POLICE IN CERTAIN COUNTRIES--TO BE HELD IN JAIL ACCORDING TO LOCAL STATUTE? OR WORSE, BEING HELD ON TRUMPED UP CHARGES? THINK OF THE IMPLICATIONS. OF COURSE, WE COULDN'T RESPOND IN KIND BECAUSE OUR SYSTEM DOES NOT OPERATE THAT WAY.

THE UNITED STATES JUDICIAL SYSTEM IS PREMISED ON THE RULE OF LAW. AND MANY OF THE POTENTIAL ABUSES THAT I HAVE JUST DESCRIBED MAY SEEM FAR-FETCHED TO AN AMERICAN. BUT UNITED STATES PERSONNEL FROM A VARIETY OF AGENCIES SERVE OVERSEAS IN COUNTRIES WHERE THE RISKS THAT I HAVE JUST OUTLINED ARE VERY REAL INDEED. IF THE UNITED STATES WERE TO REDUCE THE IMMUNITIES OF DIPLOMATIC PERSONNEL HERE, I AM CERTAIN THAT FOREIGN STATES WOULD RECIPROCATATE BY RESTRICTING THE IMMUNITIES ACCORDED TO U.S. PERSONNEL. OUR EMBASSIES IN HOSTILE FOREIGN COUNTRIES WILL NOT BE ABLE TO DO THEIR JOBS EFFECTIVELY IF THE CHILDREN OF DIPLOMATS COULD BE IMPRISONED AS A MEANS TO PRESSURE THEM AND IF THE MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF FACE THE RISK OF IMPRISONMENT.

SO FAR, I HAVE ONLY ADDRESSED THE EFFECT OF THE BILL ON OUR PERSONNEL AT EMBASSIES. BUT THE BILL WOULD ALSO AFFECT SOME PERSONNEL AT CONSULATES.

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ALTHOUGH THE PROPOSED LEGISLATION WOULD NOT AFFECT CONSULAR OFFICERS, IT WOULD AFFECT CONSULAR EMPLOYEES, WHO PERFORM IN CONSULATES THE SAME FUNCTIONS THAT ADMINISTRATIVE AND TECHNICAL STAFF PERFORM IN EMBASSIES. THE IMMUNITY FROM JURISDICTION ACCORDED TO CONSULAR OFFICERS AND CONSULAR EMPLOYEES BY THE VIENNA CONVENTION ON CONSULAR RELATIONS, AS I NOTED BEFORE, IS MUCH MORE LIMITED THAN THE REGIME WHICH APPLIES TO DIPLOMATS. CONSULAR IMMUNITY APPLIES ONLY TO ACTS PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS, I.E., TO "OFFICIAL ACTS." WHEN A CASE IS BROUGHT, THE COURT DETERMINES WHETHER THE ACTS WERE PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS. FAMILY MEMBERS HAVE NO OFFICIAL ACTS AND HAVE NO IMMUNITY. THUS, CONSULAR OFFICERS ARE NOW SUBJECT TO JURISDICTION WITH RESPECT TO MOST "CRIMES OF VIOLENCE," AS INDEED ARE CONSULAR EMPLOYEES. WHILE CONSULAR OFFICERS AND EMPLOYEES MAY RAISE THEIR FUNCTIONAL IMMUNITY AS A DEFENSE IN CONNECTION WITH A SPEEDING CHARGE OR ACCIDENT, THIS ITSELF IS NOT A BAR TO JUDICIAL ACTION. THE COURTS WOULD DETERMINE WHETHER OR NOT SUCH A DEFENSE WOULD APPLY.

THUS, EVEN WITH RESPECT TO THE MORE LIMITED IMMUNITY ACCORDED CONSULAR EMPLOYEES, THE BILL WOULD PLACE THE UNITED STATES IN VIOLATION OF THE VIENNA CONVENTION AND WOULD PUT U.S. PERSONNEL AT RISK OF RECIPROCAL MEASURES. THERE MAY, MOREOVER, BE INSTANCES IN WHICH A CONSULAR OFFICER IS CHARGED WITH A

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VIOLENT CRIME FOR AN ACT PERFORMED IN THE EXERCISE OF CONSULAR FUNCTIONS. FOR EXAMPLE, A HOSTILE COUNTRY MIGHT CHARGE A U.S. CONSULAR OFFICER WITH ASSAULT IF HE TOOK MEASURES TO DEFEND HIMSELF AGAINST PHYSICAL ATTACK BY A DISGRUNTLED VISA APPLICANT. THE UNITED STATES SHOULD BE ENTITLED TO ASSERT CONSULAR IMMUNITY TO PREVENT THE CASE FROM GOING FORWARD. THIS MEASURE, IF ENACTED, COULD PROVOKE RECIPROCAL LEGISLATION WHICH WOULD BAR SUCH ASSERTION OF IMMUNITY.

AT THIS POINT, MR. CHAIRMAN, I SHOULD POINT OUT THERE ARE COUNTRIES WITH WHICH THE UNITED STATES HAS CONCLUDED TREATIES EXTENDING BROADER IMMUNITIES FOR CONSULAR PERSONNEL. THE UNITED STATES HAS ENTERED INTO SUCH AGREEMENTS WITH THE SOVIET UNION, THE PEOPLE'S REPUBLIC OF CHINA, BULGARIA, THE GERMAN DEMOCRATIC REPUBLIC, HUNGARY, POLAND, AND ROMANIA. A SIMILAR AGREEMENT ALSO EXISTS WITH THE PHILIPPINES. (BULGARIA, THE GDR AND ROMANIA HAVE NO CONSULAR POSTS IN THE UNITED STATES.) THUS, OUR CONSULAR EMPLOYEES IN SUCH COUNTRIES AS THE USSR AND THE PRC HAVE FULL CRIMINAL IMMUNITY AND WE ARE OBLIGATED TO PROVIDE THE SAME IMMUNITIES TO CONSULAR EMPLOYEES OF THOSE COUNTRIES. THE PROPOSED LEGISLATION, THEREFORE, WOULD VIOLATE THESE BILATERAL AGREEMENTS IN ADDITION TO VIOLATING THE VIENNA CONVENTIONS.

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WHILE THE DEPARTMENT OF STATE CANNOT SUPPORT THE PROPOSED LEGISLATION, WHICH WOULD CALL INTO QUESTION THE ENTIRE FRAMEWORK OF DIPLOMATIC IMMUNITY, WE HAVE TAKEN A VARIETY OF STEPS TO CURTAIL ABUSES OF DIPLOMATIC IMMUNITY THAT ARE WHOLLY CONSISTENT WITH INTERNATIONAL LAW.

INCIDENTALLY, IT MAY BE OF INTEREST TO THE COMMITTEE THAT THE BRITISH FOREIGN OFFICE INSTITUTED A FULL REVIEW OF THE VIENNA CONVENTION IN THE AFTERMATH OF THE FATAL SHOOTING OF A POLICEWOMAN BY A GUNMAN IN THE LIBYAN EMBASSY AND THE ATTEMPTED ABDUCTION OF A NIGERIAN EXILE. THE BRITISH CONCLUDED THAT IT WOULD BE WRONG TO AMEND THE VIENNA CONVENTION AS THE SOLUTION TO THE ABUSE OF DIPLOMATIC IMMUNITY, BUT INSTEAD IMPLEMENTED A FIRMER POLICY IN THE APPLICATION OF THE CONVENTION.

I SHOULD LIKE TO TAKE THIS OPPORTUNITY TO INFORM THE COMMITTEE OF RECENT STEPS WE HAVE TAKEN.

1. BARRING REENTRY: SOME YEARS AGO I INITIATED A SYSTEM TO BAR THE REENTRY INTO THE UNITED STATES OF SERIOUS OFFENDERS ENTITLED TO CRIMINAL IMMUNITY AT THE TIME OF EXPULSION. THE NAMES OF THE OFFENDERS ARE ENTERED INTO THE DEPARTMENT'S WORLD-WIDE AUTOMATED VISA LOOKOUT SYSTEM (AVLOS) SO THAT SHOULD AN OFFENDER SEEK ANOTHER VISA, THE APPLICATION IS HELD UP UNTIL THE DEPARTMENT'S ADVICE CAN BE

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OBTAINED. THE NAMES ALSO ARE GIVEN TO THE CENTRAL OFFICE OF THE IMMIGRATION SERVICE, TO ALERT PORTS OF ENTRY THAT ARRIVALS OF SUCH PERSONS ARE TO BE REPORTED IMMEDIATELY TO THE DEPARTMENT.

WE HAVE FOUND, HOWEVER, THAT THE SYSTEM WAS NOT PERFECT AND THAT IN AT LEAST THREE CASES, THE PERSONS EXPELLED REENTERED THE UNITED STATES. TO PREVENT ANY OTHER SUCH OCCURRENCE, WE WILL ENSURE THAT THE DIPLOMATIC VISA IS CANCELLED BEFORE AN ALLEGED OFFENDER LEAVES THE COUNTRY. SHOULD THE PERSON LEAVE BEFORE THIS IS DONE, WE WILL INFORM THE MISSION CONCERNED THAT THE PRINCIPAL ALIEN CANNOT BE REPLACED UNTIL THE VISA HAS BEEN CANCELLED.

2. POLICE GUIDANCE: IN MARCH, THE DEPARTMENT PUBLISHED UPDATED AND MORE COMPREHENSIVE WRITTEN GUIDANCE FOR LAW ENFORCEMENT OFFICERS ON THE HANDLING OF INCIDENTS INVOLVING FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL. IT HAS BEEN DISTRIBUTED NATION-WIDE. I AM HAPPY TO MAKE THIS BOOKLET AVAILABLE TO THE COMMITTEE. AS YOU WILL SEE, WE HAVE POINTED OUT THE NECESSITY FOR CAREFUL AND COMPLETE POLICE WORK AT THE TIME OF THE INCIDENT IN ORDER TO LAY THE BASIS FOR POSSIBLE FUTURE PROSECUTION WHEN IMMUNITY CEASES TO EXIST. IN OTHER WORDS, WE URGE THAT CHARGES BE PURSUED AS FAR AS POSSIBLE IN OUR JUDICIAL SYSTEM. AFTER THE OFFENDER

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LEAVES THE UNITED STATES, THE EXISTENCE OF AN OUTSTANDING ARREST WARRANT MAY BE ENTERED INTO THE RECORDS OF THE IMMIGRATION AUTHORITIES. THE EXISTENCE OF THE WARRANT AND THE KNOWLEDGE THAT THE FEDERAL GOVERNMENT WILL ASSIST IN SERVING THE WARRANT WOULD DETER AN OFFENDER FROM ATTEMPTING TO RETURN TO THE UNITED STATES.

IN THE RECENTLY PUBLICIZED AFGHAN AUTO CASE, WE LEARNED THAT NEW YORK LAW ENFORCEMENT AUTHORITIES DISCONTINUED THE INVESTIGATION ON THE ASSUMPTION THAT THE DRIVER WAS IMMUNE. YOU MIGHT BE INTERESTED TO KNOW THAT NEITHER THE U.S. MISSION TO THE UNITED NATIONS NOR THE OFFICE OF PROTOCOL WAS CONSULTED IN MAKING THIS DETERMINATION. HOWEVER, AS SOON AS THE MISSION LEARNED OF THIS, IT ASKED THE POLICE TO REOPEN THE INVESTIGATION. WE DID THIS BECAUSE WE BELIEVE FIRMLY THAT IN ALL OF THESE CASES, THE FACTS MUST BE BROUGHT TO LIGHT.

3. PARENTAL RESPONSIBILITY: IN PARTICULARLY EGREGIOUS CASES INVOLVING JUVENILE OFFENDERS, I HAVE HAD THE ENTIRE FAMILY EXPELLED FROM THE UNITED STATES. THIS POLICY ENSURES THAT PARENTS WILL BE FULLY ACCOUNTABLE FOR THE ACTS OF THEIR CHILDREN.

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4. TRAFFIC OFFENSES - 8 POINT PROGRAM: IN SEPTEMBER 1985, THE DEPARTMENT'S OFFICE OF FOREIGN MISSIONS INSTITUTED A PROGRAM TO MONITOR TRAFFIC VIOLATIONS AND INCREASE THE OBSERVANCE OF TRAFFIC LAWS AND REGULATIONS. UNDER THE PROGRAM, THE DEPARTMENT ASSESSES POINTS FOR ALL TRAFFIC VIOLATIONS USING THE AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATOR'S STANDARDIZED POINT SYSTEM. THE ACCUMULATION OF 8 POINTS DURING A TWO-YEAR PERIOD MAY RESULT IN THE LOSS OF THE PRIVILEGE TO DRIVE IN THIS COUNTRY. PERSONS WITH UNPAID PARKING VIOLATIONS INCUR 1 POINT FOR EACH TICKET. SPEEDING VIOLATIONS ARE ASSESSED AT 2 OR 4 POINTS DEPENDING UPON THE RATE OF SPEED, AND PERSONS DRIVING WHILE INTOXICATED ARE ASSESSED 8 POINTS. UP TO THIS TIME, 15 DRIVERS' LICENSES HAVE BEEN PERMANENTLY SUSPENDED. WE DO NOT PERMIT A MEMBER OF THE DIPLOMATIC COMMUNITY WHO HAS OPERATED A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL TO OPERATE A MOTOR VEHICLE IN THE UNITED STATES AGAIN. THE PROGRAM HAS HAD A SALUTARY EFFECT ON THE DRIVING HABITS OF PRIVILEGED PERSONNEL.

5. FIREARMS: IN MAY 1986, WE REISSUED A CIRCULAR ON THE SUBJECT OF FIREARMS, POINTING OUT THAT FAILURE TO COMPLY WITH LOCAL LAWS AND REGULATIONS PERTAINING TO FIREARMS WILL SUBJECT THE OFFENDER TO EXPULSION.

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6. IDENTIFICATION DOCUMENTS: RECENTLY PROTOCOL BEGAN ISSUING NEWLY DESIGNED IDENTIFICATION DOCUMENTS TO ALL EMBASSY PERSONNEL ENTITLED TO ANY DEGREE OF IMMUNITY. THE CARDS IDENTIFY THE INDIVIDUAL, STATE THE TYPE OF IMMUNITY WHICH HE HAS, AND PROVIDE PHONE NUMBERS TO CALL 24 HOURS A DAY IF A LAW ENFORCEMENT OFFICIAL HAS QUESTIONS. IN CASES WHERE IMMUNITY IS LIMITED THE CARDS STATE THAT THE BEARER IS NOT IMMUNE FROM ARREST. SIMILAR CARDS WILL BE ISSUED TO CONSULAR OFFICERS AND EMPLOYEES NEXT YEAR.

7. DEFINITION OF "MEMBERS OF THE FAMILY": THE VIENNA CONVENTION REQUIRES THE PARTIES TO EXTEND PRIVILEGES AND IMMUNITIES TO FAMILY MEMBERS FORMING PART OF THE HOUSEHOLD, BUT DOES NOT DEFINE FAMILY MEMBERS. IN MAY 1986, WE INFORMED THE MISSIONS THAT WE WOULD SET AGE LIMITS BEYOND WHICH THE DEPARTMENT NO LONGER WOULD EXTEND PRIVILEGES AND IMMUNITIES TO DEPENDENT CHILDREN. THE CUT-OFF AGE IS 21, UNLESS THE CHILD IS A FULL-TIME STUDENT, IN WHICH CASE THE AGE LIMITATION IS 23. THIS STEP HAS REDUCED THE NUMBER OF PERSONS ENTITLED TO PRIVILEGES AND IMMUNITIES.

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WE ARE CONTINUALLY REVIEWING MEANS TO REDUCE THE NUMBERS OF PERSONS ENTITLED TO IMMUNITY. FOR EXAMPLE, WE ARE NOT OBLIGATED BY THE VIENNA CONVENTION TO EXTEND FULL IMMUNITY TO ALIENS "PERMANENTLY RESIDENT IN THE UNITED STATES." ACCORDINGLY, WE PROPOSE TO TERMINATE PRIVILEGES AND IMMUNITIES FOR LOCALLY HIRED MEMBERS OF EMBASSY STAFFS WHO HAVE RESIDED IN THE UNITED STATES FOR 10 YEARS OR MORE.

IN CLOSING, I WISH TO EXPRESS MY APPRECIATION FOR THIS OPPORTUNITY TO PRESENT THE DEPARTMENT'S VIEWS ON THIS SENSITIVE MATTER. ALSO, I WISH TO ASSURE YOU AGAIN THAT WE STAND READY TO TAKE ACTION IN ANY SITUATION WHERE A PERSON WITH IMMUNITY ACTS CONTRARY TO THE LAW.

MY COLLEAGUE AND I WILL NOW BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

ATTACHMENT: CHART: CRIMINAL IMMUNITY.

CRIMINAL IMMUNITY

DIPLOMATIC				CONSULAR	
DIPLOMATS*	ADMINISTRATIVE AND TECHNICAL STAFF	SERVICE STAFF	PERSONAL SERVANTS	CONSULAR OFFICERS	CONSULAR EMPLOYEES
(Ambassador, Ministers, Counsellors, 1st, 2nd & 3rd Secretaries, Attaches)	(Clerks, Typists, Procurement Officers)	(Drivers, Gardners, Cooks, Security Guards)	(Maids, Butlers)	(Consuls General, Consuls, Vice Consuls)	(Clerks, Typists)
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	NO IMMUNITY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY	CRIMINAL IMMUNITY FOR OFFICIAL ACTS ONLY
Family Members	Family Members	Family Members	Family Members	Family Members	Family Members
FULL CRIMINAL IMMUNITY	FULL CRIMINAL IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY	NO IMMUNITY
<p>*This category includes diplomats at the O.A.S. and members of missions to the United Nations and a small number of persons at the World Bank and IMF.</p> <p>By special agreement, on a reciprocal basis, all personnel at the Embassies of the People's Republic of China and the Union of Soviet Socialist Republics and members of their families enjoy full criminal immunity.</p>				<p>By special agreement, on a reciprocal basis, personnel and members of their families at the consulates of the following countries enjoy full criminal immunity:</p> <p>Hungary Peoples Republic of China Poland Philippines Union of Soviet Socialist Republics</p>	